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James R. Webb, hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on the date of my signature.

Ellen R. Webb
Signature

December 9, 2002
Date of Signature

#5
election

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: James R. Edgar)	Group Art Unit: 3677
)	
Serial No.: 09/975,649)	Examiner: Gary Wayne Estremsky
)	
Filed: October 11, 2001)	Date: December 9, 2002
)	
For: "LATCH APPARATUS AND METHOD")	Atty. Ref. No.: 87801-9015-00
)	

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

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GROUP 3600

RESPONSE TO RESTRICTION REQUIREMENT

In the Restriction requirement dated November 7, 2002, the Examiner identifies five species of the invention claimed in the present application, and requests an identification of the species elected for prosecution on the merits and a listing of all claims readable thereon. The Applicant hereby provisionally elects, with traverse, Group I for further prosecution on the merits. Claims 1-5, 7, 10-22, 26-31, 33, 35-48, 51-61, 64-78, 80-90, 92-95, 97-103, and 105-113 are readable upon Group I identified by the Examiner. It should be noted that although these claims are readable upon Group I, many of the same claims are also readable upon the other species identified by the Examiner. For example, every independent claim of the present application (i.e., claims 1, 17, 29, 37, 45, 56, 68, 81, and 98) is readable upon more than one species. Indeed, most of the independent claims (i.e., claims 1, 17, 29, 37, 45, 81, and 98) are generic to all species identified by the Examiner. Therefore, for these reasons and for the reasons set forth below, the Applicant respectfully requests reconsideration of the Restriction Requirement.

On page 2 of the Office Action, the Examiner has indicated that Figures 3 and 11 (Group I) are drawn to a separate species than Figure 16 (Group V). The Applicant respectfully submits that restriction between Groups I and V should not be required because the embodiments of the invention illustrated in figures 3 and 11 are sufficiently similar to the embodiment illustrated in figure 16 for these two groups to be searched and examined together and to be retained in a single patent application (and resulting patent). For example, both illustrated embodiments show a locking/unlocking mechanism 48, 648 having a first and second control element 50, 650 and 52, 652 coupled to each other via a pivot 64, 664. Furthermore, the locking/unlocking mechanism 48, 648 of each illustrated embodiment is coupled to a control lever 12, 612. The relative position of certain elements of the locking/unlocking mechanism 48, 648 determines whether movement of the control lever 12, 612 will actuate the pawl 28, 628. Additionally, the vast majority of pending claims that read on Group I identified by the Examiner also read on Group V. Therefore, withdrawal of the restriction between Figures 3 and 11 (Group I) and Figure 16 (Group V) is respectfully requested.

Also on page 2 of the Office Action, the Applicant notes the Examiner has indicated that Figures 8 and 15 (Group II) are drawn to separate species than Figure 9 (Group III) and Figure 10 (Group IV). The Applicant respectfully submits that this restriction should not be required because the various embodiments of the invention as illustrated in Figures 8, 9, 10, and 15 are sufficiently similar for these groups to be searched and examined together and to be retained in a single patent application (and resulting patent). In particular, each embodiment illustrated in Figures 8, 9, 10, and 15 has a locking and unlocking mechanism is in the form of an over-center device 148, 248, 348, 548 and that is coupled to a control lever 112, 212, 312, 512 for placing the control lever 112, 212, 312, 512 in locked and unlocked states based upon the over-center state of the over-center device 148, 248, 348, 548. The locking and unlocking mechanisms 148, 248, 348, 548 are shown schematically in Figures 8, 9, 10, and 15, and are not limited to the particular component shapes shown. Although the exact shape and size of the locking and unlocking mechanism components illustrated in Figures 8, 9, 10, and 15 can be employed, it is the more fundamental relationship between these components that is claimed in the vast majority of the pending claims – not the shape, size, or orientation of the components.

Accordingly, the embodiments illustrated in Figures 8, 9, 10, and 15 are sufficiently similar in their use of an over-center device to conclude that Groups II, III, and IV should be retained together for purposes of searching and examination and for inclusion in any patent issuing from the present application. In addition, the Applicant respectfully submits that restriction of the pending claims in the present application based upon figures is not proper, and functions to cloud the scope of the pending claims. A proper restriction requirement in the present case must be based upon the claims (and the subject matter therein) - not figures.

The Applicant respectfully requests reconsideration of the required election of species set forth in the office action based upon several reasons. The MPEP states that restriction is appropriate among two or more claimed inventions only if (1) they are able to support separate patents and they are either (2A) independent or (2B) distinct. However, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” See MPEP 803. Furthermore, when determining whether a restriction is appropriate, “it is the claimed subject matter that is considered . . . to determine the question of distinctness or independence.” See MPEP 806.01. Finally, if the Examiner determines that a restriction is appropriate, the Examiner “must provide reasons and/or examples to support [his] conclusions.” See MPEP 803. The Applicant respectfully submits that these requirements have not been met with respect to restriction requirement in the present application.

An important reason why the restriction is inappropriate according to the MPEP is the fact that the species as divided would not be able to support separate patents due to statutory double patenting. By way of example only, independent claims 1, 17, 29, 37, 45, 81, 98 of the present application cover all of the species identified by the Examiner. As such, these claims are considered to be generic. See MPEP 806.04(e) (stating that “a claim may include two or more of the disclosed embodiments within the breadth and scope of definition (and thus be designated a *generic or genus claim*)”). Since these claims are generic to all of the species identified by the Examiner, statutory double patenting prevents these claims from being prosecuted in a second

application to cover the other (non-elected) species in addition to being prosecuted in the current application for the elected species.

Furthermore, since independent claims 1, 17, 29, 37, 45, 81, 98 are generic to all of the species, the present application should not be restricted to one species due to 37 CFR 1.141. Rule 141 states that reasonable number of species may be specifically claimed in a single national application provided that all of the additional species are written in dependent form. The provisionally non-elected species (Groups II-V) meet these requirements.

Another reason why the restriction set forth in the Office Action is inappropriate according to the MPEP is because no indication, reasons, or proof have been provided regarding why each species is distinct. Section 808 of the MPEP requires the Examiner to provide “(A) the reasons (as distinguished from the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct; and (B) the reasons for insisting upon restriction therebetween.” With regard to (A), no reason has been provided regarding why the *claimed* inventions are distinct. With regard to (B), the restriction is improper because no reasons exist for the restriction. Section 808.02 of the MPEP states that “the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following:” separate classification, separate status in the art, or a different field of search. Accordingly, the Applicant respectfully submits that the restriction in the present case is improper.

Although the Applicant submits that the restriction in the present application is inappropriate, if the Examiner finds the above arguments unpersuasive, the Applicant respectfully submits that the Examiner’s division of species is incorrect. Specifically, and as indicated above, at a minimum Groups I and V should be combined and Groups II, III, and IV should be combined. However, as stated in the MPEP, restrictions must be based upon the claims. Therefore, since all five species are covered by many of the same independent claims, the Applicant respectfully requests reconsideration of the division of these species.

Summarizing the above, the provisional election of Group I is made with traverse, and the Applicant respectfully requests reconsideration of this restriction. Claims 1-5, 7, 10-22, 26-31, 33, 35-48, 51-61, 64-78, 80-90, 92-95, 97-103, and 105-113 correspond with this election. The Applicant respectfully submits that at least independent claims 1, 17, 29, 37, 45, 81, and 98 are generic to all species identified by the Examiner. As such, all species should be examined.

Early, favorable consideration of the application is respectfully requested. The Examiner is invited to contact the undersigned if he believes it would be helpful.

Respectfully submitted,

BY 

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Group Art Unit 3677

In re Patent Application of:

James R. Edgar

Application No.: 09/975,649

Confirmation No.: 8597

Filed: October 11, 2001

Examiner: Gary Wayne Estremsky

Title: "LATCH APPARATUS AND
METHOD"

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Transmitted herewith is a response to the restriction requirement in the above-identified application. No additional claim fees are due. In the event Applicant has overlooked the need to request an extension of time, please consider this a request for same. Please charge or credit Deposit Account No. 13-3080 with any shortage or overpayment of the fees associated with this communication.

I, Ellen R. Webb, hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on the date of my signature.

Signature

December 9, 2002

Date of Signature

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